Order

Michigan Supreme Court
Lansing, Michigan

May 12, 2023

Elizabeth T. Clement,
Chief Justice

163515

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

TRUGREEN LIMITED PARTNERSHIP,
Plaintiff-Appellant,

v

SC: 163515
COA: 344142
Ct of Claims: 17-000141-MT

DEPARTMENT OF TREASURY,
Defendant-Appellee.

_____/

On January 12, 2023, the Court heard oral argument on the application for leave to appeal the July 29, 2021 judgment of the Court of Appeals. On order of the Court, the application is again considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

WELCH, J. (*concurring*).

I concur with the Court's decision to deny leave to appeal in this case, and to leave in place the Court of Appeals opinion reaffirming what taxpayers and courts in this state have understood for decades—that the "agricultural use exemption" found in MCL 205.94(1)(f) applies to agricultural uses. Plaintiff-appellant TruGreen Limited Partnership disputes its tax liability, arguing that it is entitled to a use tax exemption under MCL 205.94(1)(f) because it maintains lawns for nonagricultural purposes and therefore some of its property should be considered to be used for "things of the soil" for purposes of the use tax exemption. The Court of Appeals disagreed after analyzing the history and context of the statute, concluding that this exemption applies only to agricultural uses. This case presents a textbook study on contrasting applications of statutory interpretation principles. I write separately to explain why I disagree with my dissenting colleague's characterization of the Court of Appeals decision and our role as interpreters of statutory law.

I. CONTEXT MATTERS IN STATUTORY CONSTRUCTION

TruGreen is a lawn care company. By its own admission, it is not an agricultural business. Rather, TruGreen cares for the lawns and landscaping of its residential and commercial clients. Since 1935, Michigan has had an agricultural production exemption to its use tax. See 1929 CL 3663-1(b.1), as amended by 1935 PA 77 (the first agricultural

use exemption); see also MCL 205.94(f) (its modern iteration). In 2004, Michigan entered into the Streamlined Sales and Use Tax Agreement, a joint effort of multiple states to simplify tax collections among them.[1] To comply with its requirements under the agreement, the Legislature simplified the language of MCL 205.94(1)(f) and removed a *reporting* requirement that the purchaser *certify* in writing that the "property is to be used or consumed in connection with the production of horticultural or agricultural products as a business enterprise."[2] This was not a *substantive* alteration that changed the statute from a narrower agricultural use exemption into a broader exemption. Rather, as part of a larger tax collection overhaul requiring revisions to multiple sections of the sales and use tax statutes, it merely changed the written certification requirement for those taking the exemption.[3] The relevant statutory provision during the 2012–2016 tax years stated:

> (1) The following are exempt from the tax levied under this act, subject to subsection (2):[4]
>
> * * *
>
> (f) Property sold to a person engaged in a business enterprise and using and consuming the property in the tilling, planting, caring for, or harvesting of the things of the soil or in

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[1] This was effected by enacting the Streamlined Sales and Use Tax Administration Act, MCL 205.801 *et seq*. While the definition of "streamline" is well known, dictionary definitions and their value are bandied back and forth in the competing Court of Appeals decisions and highlighted by the dissent. "Streamline" in context means "to make simpler or more efficient." *Merriam-Webster's Collegiate Dictionary* (11th ed). It does not mean "to substantively alter."

[2] See 2004 PA 172.

[3] See House Legislative Analysis, HBs 5502 through 5505 (March 23, 2004) (explaining that HB 5504 "deletes a provision that requires *a statement attesting* that the property will be used in connection with production of horticultural or agricultural products") (emphasis added). Although we have previously noted that a bill analysis is not an ideal indicator of legislative intent for purposes of statutory construction, see *Frank W Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 587 (2001), it can "under certain circumstances" be "a persuasive tool of statutory construction" where "the bill's intent [is] consistent with other evidence showing the same intent," *id*. at 588-589 (KELLY, J., concurring). In this case, the amended statutory text reflects the intent described in the legislative analysis. Because of that, the analysis provides a relevant window into legislative intent.

[4] MCL 205.94(2) explains, in part, that "[t]he exemption is limited to the percentage of the exempt use to total use determined by a reasonable formula or method approved by the department."

> the breeding, raising, or caring for livestock, poultry, or horticultural products, including transfers of livestock, poultry, or horticultural products for further growth. This exemption includes machinery that is capable of simultaneously harvesting grain or other crops and biomass and machinery used for the purpose of harvesting biomass. This exemption includes agricultural land tile, which means fired clay or perforated plastic tubing used as part of a subsurface drainage system for land used in the production of agricultural products as a business enterprise and includes a portable grain bin, which means a structure that is used or is to be used to shelter grain and that is designed to be disassembled without significant damage to its component parts. This exemption does not include transfers of food, fuel, clothing, or similar tangible personal property for personal living or human consumption. This exemption does not include tangible personal property permanently affixed to and becoming a structural part of real estate. As used in this subdivision, "biomass" means crop residue used to produce energy or agricultural crops grown specifically for the production of energy. [MCL 205.94, as amended by 2012 PA 474.][5]

The question presented to and correctly answered by the lower courts is whether a lawn care company may properly claim the *agricultural exemption* for property it uses to maintain *lawns and landscaping*. The answer is simple: no.

While TruGreen argues that it is entitled to the use tax exemption because it "plants" grass and "cares for things of the soil," the Court of Appeals aptly noted the problem with this analysis:

> Were we to consider the words and phrases cherry-picked by TruGreen in isolation from the rest of the text, we might agree that TruGreen should prevail. TruGreen's proposed interpretive methodology, however, reduces the statute's meaning to a couple of selectively harvested words and buries the balance of the text. This approach risks an interpretation in tension with the whole text's most logical and natural meaning. Rather than plucking words from the statute, we focus on the whole textual landscape. We endeavor to harmonize *all* the words, thereby cultivating a coherent reading

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[5] Subsequent alterations amended this section to add "draining" and "maintaining" to the list of actions preceding "things of the soil" and rearranged the 2012 language into different subsections. See 2016 PA 432; 2018 PA 114.

> that promotes the Legislature's goals. [*TruGreen Ltd Partnership v Dep't of Treasury (On Remand)*, 338 Mich App 248, 257 (2021).]

The Court of Appeals, citing the whole-text canon, noted that the statute contains "a string of participles: tilling, planting, caring for, harvesting, breeding, and raising." *Id*. at 258, see also *id*. at 257-258, citing *Davis v Mich Dep't of Treasury*, 489 US 803, 809 (1989); Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* (St. Paul: Thomson/West, 2012), p 167 ("The whole-text canon . . . calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts."); *South Dearborn Environmental Improvement Ass'n, Inc v Dep't of Environmental Quality*, 502 Mich 349, 367-368 (2018) ("However, we do not read statutory language in isolation and must construe its meaning in light of the context of its use."); and *TOMRA of North America, Inc v Dep't of Treasury*, 505 Mich 333, 351 (2020) ("This interpretation reflects a holistic reading of the statutory text and gives each provision its appropriate meaning and function."). "Although grass and trees are 'things of the soil,' that phrase is surrounded by words describing activities that take place on farms. . . . TruGreen plants grass and cares for it. But the grass it plants and tends is decorative, and the work it does is unrelated to crop cultivation or agriculture in general." *TruGreen*, 338 Mich App at 258. Notably, the statute repeatedly refers to traditional agricultural and horticultural uses. See MCL 205.94(1)(f), as amended by 2012 PA 474 (referring to "property sold to a person engaged in . . . the *tilling, planting, caring for, or harvesting* of the things of the soil or in the *breeding, raising, or caring for livestock, poultry, or horticultural* products, including *transfers of livestock, poultry, or horticultural products for further growth*") (emphasis added). It specifically also notes that the exemption includes "machinery that is *capable of simultaneously harvesting grain or other crops and biomass and machinery used for the purpose of harvesting biomass*" and "*agricultural land tile*" as well as "*portable grain bin*[*s*]" *Id*. (emphasis added). The exemption made clear that it did not apply to "transfers of food, fuel, clothing, or similar tangible personal property for personal living or human consumption" or "tangible personal property permanently affixed to and becoming a structural part of real estate." The Court of Appeals analysis is sound and logical when one examines the statute as a whole and avoids picking words out of context.[6]

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[6] The following canons of construction support denying leave: (1) the whole-text canon, discussed earlier (requiring texts be construed as a whole), (2) the harmonious-reading canon (requiring provisions of a text to be interpreted compatibly), see *In re Huntington Estate*, 339 Mich App 8, 22 (2021) ("We are required generally to harmonize all statutory provisions if we can do so reasonably"), citing *Reading Law*, pp 180-182, (3) the reenactment canon (stating that reenactments by way of a consolidating statute or "restyling project" do not substantively change the law), see *Reading Law*, pp 256-260, and (4) the presumption against implied repeal (stating that repeals by implication are disfavored), see *IBM Corp v Dep't of Treasury*, 496 Mich 642, 651 (2014) ("We begin our

II. THE USE OF DICTIONARIES

The Court of Appeals concurring opinion cites law review articles discussing the explosive dependence on dictionaries by this Court and others over the last 38 years.[7] As with the statute at issue in this case, the context of this critique is important. Contrary to my dissenting colleague's assertion, Judge SHAPIRO did not "raise questions about the widespread and well-accepted practice of using dictionaries to aid in the interpretation of statutory text" when necessary. Judge SHAPIRO'S concurrence critiqued an overreliance on—or, as he put it, "fetishizing" of—dictionaries,[8] and the judicial tendency to use them as escape levers to achieve the desired result of the judge rather than to determine the "*contextually* appropriate ordinary meaning," *Reading Law*, p 70 (emphasis added).

In one of the cited articles, Professor Joseph Kimble noted that our Court's reliance on dictionary definitions rose from 0.4% of cases decided between 1845 and 1984 to 39.6% of cases decided between 2005 and 2014.[9] Regardless of whether one agrees *generally* with relying on dictionaries when words elude easy definition, it is a staggering increase worthy of—if nothing else—critical self-reflection on the part of serious jurists. For instance, must we look to *The Oxford English Dictionary* to define a word we all intrinsically know, like "thing"? Probably not. Should we pledge fealty to that broadest of definitions to hold that contextual rules of construction do not matter? Certainly not.

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analysis with the axiom that repeals by implication are disfavored.") (quotation marks and citation omitted). See generally, e.g., *Reading Law*.

[7] *TruGreen Ltd v Dep't of Treasury*, 332 Mich App 73, 94 n 8 (2020) (SHAPIRO, P.J., concurring), vacated and remanded 507 Mich 950 (2021), affirmed 338 Mich App 248 (2021), citing Kimble, *What the Michigan Supreme Court Wrought in the Name of Textualism and Plain Meaning: A Study of Cases Overruled, 2000–2015*, 62 Wayne L Rev 347, 359-360 (2017); Aprill, *The Law of the Word: Dictionary Shopping in the Supreme Court*, 30 Ariz St L J 275, 334 (1998); Hoffman, *Parse the Sentence First: Curbing the Urge to Resort to the Dictionary When Interpreting Legal Texts*, 6 NYU J Legis & Pub Pol'y 401, 401 (2003); see also Kimble, *Dictionary Diving in the Courts: A Shaky Grab for Ordinary Meaning*, 22 J of App Practice & Process 209 (2022) (originally cited by Judge SHAPIRO in *TruGreen Ltd*, 332 Mich App at 94 n 6, as providing "preliminary data supplied by Professor Joseph Kimble for a work in progress"). Judge SHAPIRO readopted his concurrence by reference on remand. See *TruGreen Ltd (On Remand)*, 338 Mich App at 263 (SHAPIRO, P.J., concurring).

[8] *TruGreen Ltd*, 332 Mich App at 96 (SHAPIRO, P.J., concurring).

[9] *Dictionary Diving in the Courts*, pp 210-211.

Specifically, Judge SHAPIRO'S concurrence took issue with the dissent's reliance on *The Oxford English Dictionary* to define "thing" as "[a]n entity of any kind" and that because grass is an *entity* that grows in soil it is therefore a "thing of the soil" in context.[10] A tidy conclusion, but an incomplete one. The definition of "thing" from *The Oxford English Dictionary* is perfectly accurate. However, without context, the definition opens the door far beyond what the Legislature intended.[11] The dictionary does nothing in this context beyond establish the outer boundaries of what a word could (*or could not*) mean but fails to capture what a word *does mean* in context. This is a key critique in one of the articles cited by the concurrence. See Kimble, *Dictionary Diving in the Courts: A Shaky Grab for Ordinary Meaning*, 22 J of App Practice & Process 209, 233 (2022) ("There's a problem even more fundamental than courts' excessive and unsystematic use of dictionaries: they are inherently weak authority for what a contested word means in context.").

As pointed out by the dissent in this matter, dictionaries " 'establish *outer boundaries* of what a word could (or could not) mean' rather than establish the 'one true and right meaning' in a given context." *Post* at 9, quoting Rubin, *War of the Words: How Courts Can Use Dictionaries in Accordance With Textualist Principles*, 60 Duke L J 167, 191 (2010) (emphasis altered). This Court has expressly stated that "[t]he Legislature is not confined to a single dictionary definition of a term when enacting a law, and neither should this Court be so limited when interpreting that law. *The dictionary is but one data point; it guides our analysis, but it does not by itself settle it.*" *In re Erwin*, 503 Mich 1, 21 (2018) (emphasis added).

The dissent notes that even when relying on dictionaries, judges are not "potted plant[s], bound to unthinkingly apply a dictionary definition that would strike the average reader as odd or unreasonable." On that, we agree. In this case, the words of the statute and their origin both point to the correct meaning of the phrase "things of the soil," which is the meaning adopted by the Court of Appeals. For these reasons, I concur in the decision to deny leave to appeal in this matter.

BOLDEN, J., joins the statement of WELCH, J.

VIVIANO, J. (*dissenting*).

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[10] See *TruGreen Ltd*, 332 Mich App at 94 n 7 (SHAPIRO, P.J., concurring).

[11] The dissent's interpretation of "things of the soil" would expand the use tax exemption to every lawn care and landscaping business. It would also, as noted by the Court of Appeals majority, create a sales tax exemption for these entities. See *TruGreen Ltd (On Remand)*, 338 Mich App at 258 n 3.

The use tax exemption under MCL 205.94 exempts certain property sold to a business for use in the business. The question in this case is whether the property must be used in agricultural production to qualify for an exemption under MCL 205.94(1)(f). In other words, may a nonagricultural business, like plaintiff TruGreen Limited Partnership, avail itself of the exemption? The Court of Appeals held that the statutory exemption applied only to products used for agricultural production. But the statute says nothing about agricultural production. The relevant language allows exemptions for property sold to persons in a business that "uses or consumes the property, directly or indirectly, for either the tilling, planting, draining, caring for, maintaining, or harvesting of things of the soil . . . ." MCL 205.94(1)(f).

In nevertheless limiting the exemption to businesses involved in agricultural production, the Court of Appeals ignored the current text of the statute and read into the statute a previous requirement that is no longer in the statute. As the Court of Appeals dissent explained, the original version of the statute applied to transactions of property "for consumption or use in . . . agricultural producing." 1929 CL 3663-1(b.1), as amended by 1935 PA 77. The term "agricultural producing" was removed in 1949 PA 273, § 4(f), and replaced by the term "things of the soil." The statute still required the taxpayer to certify in writing that the "property is to be used or consumed in connection with the production of horticultural or agricultural products as a business enterprise." *Id*. But the Court of Appeals held that "[t]his language [did] not require that a taxpayer be in the business of producing agricultural products." *William Mueller & Sons, Inc v Dep't of Treasury*, 189 Mich App 570, 573-574 (1991). And even this last vestige of the agricultural-production requirement was removed by the Legislature in 2004 PA 172, § 4(1)(f).

Consequently, there is simply no textual basis for the Court of Appeals' conclusion that even though the Legislature removed all references to agricultural production from the text, the Legislature nevertheless meant to retain such a limitation. For that reason, and for others given in Judge SWARTZLE's two dissents in this case, I would hold that there is no agricultural-production requirement in the statute and that plaintiff is otherwise entitled to an exemption. See *TruGreen Ltd Partnership v Dep't of Treasury (On Remand)*, 338 Mich App 248, 263-264 (2021) (SWARTZLE, J., dissenting); *TruGreen Ltd Partnership v Dep't of Treasury*, 332 Mich App 73, 96-119 (2020) (SWARTZLE, J., dissenting), vacated and remanded 507 Mich 950 (2021).

In reaching the opposite conclusion, the Court of Appeals concurrence took the odd tack of decrying text-based statutory interpretation. Specifically, the concurrence attempted to raise questions about the widespread and well-accepted practice of using dictionaries to aid in the interpretation of statutory text. According to the concurrence, dictionary use is a recent phenomenon that allows judges to cherry-pick favored definitions, "is inconsistent with language theory," and fails to reflect how statutes are drafted. *TruGreen*, 332 Mich App at 94-95 (SHAPIRO, P.J., concurring). Judges who use dictionaries, the concurrence seems to suggest, are lazy and unprincipled:

> [J]urisprudence by dictionary remains tempting; it requires no effort beyond looking up a few words and picking the definition that supports the author's position. More insidiously, it implies that reasoned good-faith discussion, analysis of caselaw and context, and stare decisis are not aids to interpretation but, rather, stumbling blocks on the path to the absolute clarity that can only be provided by a dictionary. Dictionary usage has become a fetish by which reasoned analysis, criticism, and concern for actually existing conditions are rendered irrelevant to the judicial process. Despite the ease of deciding cases by dictionary, the question is what the intent of the Legislature was, not what the intent of a dictionary editor is. [*Id*. at 95-96.]

The sentiments above misapprehend the history of dictionaries and misconceive how they are to be used.[12] It is certainly true that "an uncritical approach to dictionaries

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[12] In pointing out the increased use of dictionaries in the modern era, the concurrence overlooks the fact that dictionaries were less available and less exhaustive in the nineteenth century. Noah Webster's first dictionary of the English language was published in 1806, and his first dictionary of American usage came in 1828. Merriam-Webster, *Noah Webster and America's First Dictionary* <https://www.merriam-webster.com/about-us/americas-first-dictionary> (accessed April 18, 2023) [https://perma.cc/WZ8F-33RQ]. The latter dictionary had only 70,000 entries, *id*.; the current version contains 470,000, see Merriam-Webster, *How many words are there in English?*, <https://www.merriam-webster.com/help/faq-how-many-english-words#:~:text=Webster's%20Third%20New%20International%20Dictionary%2C%20Unabridged%2C%20together%20with%20its%201993,Section%2C%20includes%20some%20470%2C000%20entries> (accessed April 18, 2023) [https://perma.cc/J3RJ-X89A]. The monumental Oxford English Dictionary was first published in parts from 1884 to 1928. Oxford English Dictionary, *History of the OED* <https://public.oed.com/history/> (accessed April 12, 2023) [https://perma.cc/9VQ5-YCGF]. Finding a copy of a dictionary in mid-nineteenth century America appears to have been difficult, too. See, e.g., Coon, *162 Years of Dictionary Use in the Oregon Appellate Courts*, 55 Willamette L Rev 213, 221 (2019) (noting that the territorial library in Oregon lacked a dictionary until 1866 and did not obtain multiple versions of dictionaries until close to the end of the century).

And even when they became more prevalent, dictionaries were pushed aside in the mid-twentieth century when the fashionable interpretive methodology eschewed text and looked to abstract purposes and legislative history. See generally Manning, *Second-Generation Textualism*, 98 Calif L Rev 1287, 1291-1293 (2010) (discussing interpretative practices in the mid-twentieth century and the use of legislative history); Manning, *What Divides Textualists From Purposivists?*, 106 Colum L Rev 70, 78 (2006) (discussing purposivism as developed in the mid-twentieth century). For these reasons, any increased

can mislead judges . . . .” Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* (St. Paul: Thomson/West, 2012), p 415. That is why a judge must take care even in selecting which dictionaries to use. *Id.* at 415-417. “[A] comparative weighing of dictionaries is often necessary.” *Id*. at 417. And a judge relying on a dictionary must also “consult the prefatory material [in the dictionary] to understand the principles on which the dictionary has been assembled.” *Id*. at 418; see also Rubin, *War of the Words: How Courts Can Use Dictionaries in Accordance With Textualist Principles*, 60 Duke L J 167, 192-194 (2010) (contending that courts should consult multiple dictionaries and be able to explain why certain dictionaries offer more reliable definitions).

Judges must, of course, be especially careful when selecting the appropriate definition of the term from the appropriate dictionaries. As a general matter, it must be kept in mind that dictionaries offer core definitions of terms but do not always reflect peripheral usages. *Id*. A dictionary entry usually provides multiple “senses” and “subsenses” of a term. *People v Wood*, 506 Mich 114, 137 (2020) (VIVIANO, J., dissenting). These represent “possible” meanings of the term rather than “ordinary” meanings. Slocum, *Ordinary Meaning: A Theory of the Most Fundamental Principle of Legal Interpretation* (Chicago: University of Chicago Press, 2015), p 215; see also *War of the Words*, p 191 (noting that dictionaries generally “establish outer boundaries of what a word *could* (or could not) mean” rather than establish the “one true and right meaning” in a given context). Courts must therefore carefully parse “ ‘the context in which a given word appears to determine its aptest, most likely sense.’ ” *Wood*, 506 Mich at 138, quoting *Reading Law*, p 418. And judges cannot cut and paste from various inconsistent definitions but must take them as provided. See *In re Erwin*, 503 Mich 1, 35-36 & n 27 (2018) (VIVIANO, J., dissenting).

Even after all this, a judge is not simply a potted plant, bound to unthinkingly apply a dictionary definition that would strike the average reader as odd or unreasonable. “[T]he acid test of whether a word can reasonably bear a particular meaning is whether you could use the word in that sense at a cocktail party without having people look at you funny.” *Johnson v United States*, 529 US 694, 718 (2000) (Scalia, J., dissenting). The lodestar of interpretation is a “fair reading” of the text: “determining the application of a governing text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued.” *Reading Law*, p 33. Indeed, the Legislature has similarly instructed courts that unless the terms it uses have “acquired a peculiar and appropriate meaning in the law,” we must interpret “[a]ll words and phrases . . . according to the common and approved usage of the language . . . .” MCL 8.3a.

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usage of dictionaries does not necessarily reflect a new way of interpreting statutes. Instead, it simply reflects the increasing availability of a useful tool to undertake the same close examination of the text that courts have always been obligated to undertake.

This is not easy work. It "requires aptitude in language, sound judgment," and thorough study of the texts. *Reading Law*, p 33. Moreover, unlike the approach (or lack thereof) advocated by the Court of Appeals concurrence in the present case, this approach requires "suppression of personal preferences regarding the outcome . . . ." *Id.* Dictionaries and semantic principles used to uncover the ordinary meaning of a text constrain judges. While there is room for honest debate in tough cases about how to apply these principles and materials, jettisoning them altogether invites courts to indulge their personal preferences and seek predetermined outcomes.

The Court of Appeals concurrence elevates a judge's personal preferences over the intent of the Legislature as expressed in the text of the laws it enacts. How else does the concurrence propose to comply with MCL 8.3a and uncover the ordinary meaning of statutory text? What alternatives offer stable and consistent principles that restrain courts from sauntering after the results they prefer? The rule of law depends upon the courts' predictable and stable interpretations. See *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 592-593 (2005) ("What are the standards upon which litigants can reasonably predict [the dissenting Justice's] future interpretations, the rule of law being dependent upon such predictability?"). The concurrence, in justifying the Court of Appeals' atextual holding, offers nothing that would ensure such predictability. A reader who looks at the current version of MCL 205.94(1)(f) would nowhere see an agricultural-production requirement. And an even more intrepid reader, who researches the statutory history, would discover that the Legislature has, over time, eliminated all vestiges of such a requirement from the statutory text. So the average reader, looking to the text of the law, would no doubt be completely befuddled by the result of the decision below.

In place of semantic analysis based on proper dictionary usage and sound interpretive principles, the concurrence offers gauzy phrases such as "reasoned analysis, criticism, and concern for actually existing conditions . . . ." *TruGreen*, 332 Mich App at 95 (SHAPIRO, P.J., concurring). How do these vagaries apply here? It is unclear. The concurrence's only apparent concessions to textual analysis are to claim that "things of the soil" is a term of art referring to agricultural production and that the context supports this conclusion. But it provides no case, dictionary, or other source that has ever said that this phrase is a term of art. This is interpretation by ipse dixit.[13] As for the context, the Court

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[13] Ironically, before spending an entire section of its opinion eschewing dictionary usage, the concurrence uses a lay dictionary—albeit incorrectly—to define a legal concept, a "term of art." A "term of art" is "[a] word or phrase having a specific, precise meaning in a given specialty, apart from its general meaning in ordinary contexts." *Black's Law Dictionary* (11th ed). The concurrence suggests that simply because this statute has been interpreted in the past, that means a phrase contained therein ("things of the soil") is a term of art. Critically, however, that phrase itself has not been interpreted by any case cited by the majority or concurrence. And, more generally, the mere fact that a statute has been

of Appeals dissent thoroughly explained how the concurrence and majority's crabbed reading of the context artificially limited the plain meaning of the text. It is true that context might limit the reach of a term based on the semantic content of the full text in which the term appears and the application of other principles of interpretation. See generally *Ordinary Meaning*, p 213 (noting how "linguistic phenomena . . . interact with context to restrict the domain of a sentence from its literal meaning"). But context cannot be manipulated to conjure up requirements that were previously struck from the statute.[14]

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interpreted in a particular manner does not mean that a given term within that statute had acquired a meaning "in a given specialty" at the time the statute was enacted. See *Yellen v Confederated Tribes of the Chehalis Reservation*, 594 US ___, ___; 141 S Ct 2434, 2445 (2021) ("Ordinarily, . . . this Court reads statutory language as a term of art only when the language was used in that way at the time of the statute's adoption. . . . In relying on sources postdating [the statute at issue], respondents must show not only that the language of the recognized-as-eligible clause later became a term of art, but also that this term-of-art understanding should be backdated to [the statute's] passage in 1975. They cannot make that showing."). Here, the concurrence presented no source suggesting that the phrase "things of the soil" had any meaning in legal or horticultural contexts at the time it was first used in the statute.

[14] In stressing the importance of context, the concurrence reflected the majority's assertion that "context is king." *TruGreen (On Remand)*, 338 Mich App at 259. It is true that "[c]ontext always matters. Let us not forget, however, *why* context matters: It is a tool for understanding the terms of the law, not an excuse for rewriting them." *King v Burwell*, 576 US 473, 500-501 (2015) (Scalia, J., dissenting). There is no support for the notion that context entitles courts to refashion the text. Ironically, the Court of Appeals majority cited *King v St Vincent's Hosp*, 502 US 215 (1991), to support its assertion that "context is king." *TruGreen (On Remand)*, 338 Mich App at 257. Yet, the Court there rejected a party's effort to employ context to craft limitations that were nowhere apparent on the plain text of the statute. *St Vincent's Hosp*, 502 US at 221-222. The majority committed the very same error that the United States Supreme Court cautioned against—subverting the text of MCL 205.94(1)(f) by claiming that context requires that an exemption be "aimed at growing Michigan's agricultural economy," *TruGreen (On Remand)*, 338 Mich App at 251, despite the absence of text to support its claim.

The Court of Appeals majority opinion erred by focusing more on the statutory context than the current text of the statute. Instead, I agree with the dissenting judge's interpretation—including its rather unremarkable use of the *Oxford English Dictionary* to assist in interpreting the meaning of one of the relevant statutory terms. An approach to judging that is untethered from the statutory text—like the one advocated by the Court of Appeals concurrence—would undermine the rule of law by making the law less predictable and understandable. And it would take judges well outside their constitutionally mandated lane. See *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 525 (2005) ("Because the role of the judiciary is to interpret rather than write the law, courts lack authority to venture beyond a statute's unambiguous text."). Our ability to govern ourselves is dependent on judges who adhere to the people's decisions, as reflected by the enactments of the Legislature, instead of the judge's own policy preferences.

For the reasons discussed above, I would reverse the decision below.

CLEMENT, C.J., and ZAHRA, J., join the statement of VIVIANO, J.